

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6842 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

DM MANKAD

Appearance:

M/S PATEL ADVOCATES for Petitioner

MS KHYATI P HATHI for Respondent No. 1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 22/10/97

ORAL JUDGEMENT

Heard the learned Advocates for the parties.
Respondent No.1-D M Mankad (hereinafter referred to as 'original applicant') was promoted as Sr.Clerk by order dated 17.4.1985 and he was posted in the office of Superintending Engineer, Salinity Ingress Investigation circle, Jamnagar. The petitioner gave consent to resume the post of promotion. However, he was not relieved by the Deputy Executive Engineer. This fact was brought to

the notice of the Superintending Engineer by the petitioner. However, the Superintending Engineer, by order dated 14.10.1985, cancelled the petitioner's promotion. The said order was challenged by the original applicant before the Gujarat Civil Services Tribunal. The Tribunal arrived at the conclusion that

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Therefore, it clearly transpires from the aforesaid circumstances that while the appellant was waiting for a reply to his application dated 1.6.1985 and the Deputy Executive Engineer did not relieve him, the respondent cancelled the order of promotion on the ground that acceptance, refusal or otherwise of promotion was not received in his office till the date of cancellation. The appellant had expressed his willingness to accept the promotion at Jamnagar and had subsequently made an application requesting posting at Rajkot on account of family circumstances. The respondent was required to consider the application of the appellant before cancelling his promotion. The application of the appellant is very clear. It is not a conditional application but he has simply requested a change of place and, therefore, in our opinion, the said application cannot be equated with refusal of promotion and thus the respondent No.1 is not justified in cancelling the order of promotion. Therefore, the contention of the representative of the respondent is not well founded. However, the contention of Shri M M Vachharajani, learned Advocate is well founded and deserves to be accepted."

2. Mr Patel, learned Solicitor for M/s.Patel Advocates has failed to point out any infirmity in the said finding. The only contention is that the petitioner had not joined on the transfer post, and therefore, the promotion was rightly cancelled. It is also stated that the petitioner was given higher pay scale in the year 1989. So far as this aspect is concerned, it is not required to be further considered as the Tribunal has only directed that the pay shall be fixed notionally as if he was promoted from the deemed date and he would not be entitled to any arrears.

3. In view of the aforesaid, there is no merit in this Special Civil Application and the same is accordingly rejected. Rule discharged.

22.10.97.

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